

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John F. Grady	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5910	DATE	7/7/2004
CASE TITLE	Brenda Burke vs. Prudential Insurance Company		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.

(3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).

(10)  [Other docket entry] Plaintiff's Petition for Prejudgment Interest and Attorneys Fees and Costs is allowed. The parties shall confer pursuant to Local Rule 54.3. If a fee petition is necessary, plaintiff shall file it by August 6, 2004 and defendant may respond by August 20, 2004. A proposed judgment order may be submitted for the agreed amounts of benefits and prejudgment interest. The court will reserve jurisdiction to decide the question of fees and costs.

(11)  [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.		number of notices	Document Number
No notices required.		JUL 09 2004	
Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		docketing deputy initials	
Docketing to mail notices.		7/7/2004	
Mail AO 450 form.		date mailed notice	
Copy to judge/magistrate judge.		KM	
KM	courtroom deputy's initials	mailing deputy initials	
U.S. DISTRICT COURT CLERK 2004 JUL - 8 PM 4:37 Date/time received in central Clerk's Office			

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BRENDA BURKE, )  
Plaintiff, )  
v. ) 02 C 5910  
THE PRUDENTIAL INSURANCE )  
COMPANY OF AMERICA, )  
Defendant. )

DOCKETED  
JUL 09 2004

MEMORANDUM OPINION

The court has considered the memoranda of the parties and makes the following rulings on Plaintiff's Petition for Prejudgment Interest and Attorneys Fees and Costs.

Prejudgment Interest

The case is governed by Gorenstein Enterprises, Inc. v. Quality Care-USA, Inc., 874 Fd.2d, 431, 436 (7<sup>th</sup> Cir. 1989), where the Court stated:

For the future, we suggest that district judges use the prime rate for fixing prejudgment interest where there is no statutory interest rate. That is a readily ascertainable figure which provides a reasonable although rough estimate of the interest rate necessary to compensate plaintiffs not only for the loss of the use of their money but also for the risk of default.

While the court's "suggestion" of the prime rate was not intended as a "straitjacket" for district judges, id. at 437, the only reason the court mentioned for not applying the prime rate would be a concern that it might not be high enough to account for the risk

62

of default "in deciding what a compensatory rate of interest would be." Id. at 436. In this case, there is no indication that the Prudential Insurance Company of America would be likely to default in the payment of the judgment. The prime rate seems appropriate in the circumstances, and plaintiff's suggestion that we apply the 9% rate provided for in the Illinois Insurance Code for overdue insurance payments has no logic to recommend it over the language of the Seventh Circuit in Gorenstein. Prejudgment interest will be awarded at the prime rate.

Attorneys' Fees

Here, we agree with plaintiff, whose memorandum lays out in accurate detail just why there was no "solid basis" for the defendant's position in the case. It is true that we did express uncertainty as to whether there was any job plaintiff could perform notwithstanding her disability. We found the question to be close, but in reviewing the discussion of it in the transcript of our decision, we note that all of the evidence pertaining to it had been produced by plaintiff. Nothing had been produced by defendant, and, as plaintiff points out, the issue was never relied upon as a basis for denying payment. Defendant did not raise it until just before trial. It appears to have been an afterthought, and defendant made no attempt to develop it at trial. In any event, the court resolved the issue against the defendant and, proceeding to the real issue in the case, found the evidence to be

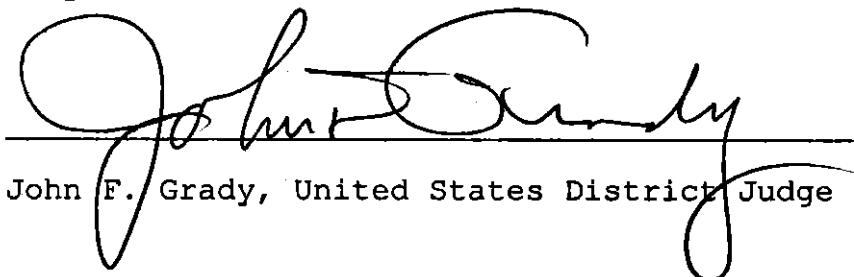
overwhelming that defendant had no basis for refusing payment on the basis of the psychiatric exclusion in the policy. Indeed, as plaintiff points out, defendant made no real effort to prove the applicability of the exclusion either in preparation for trial or at trial. It conducted no discovery and offered only the deposition of Dr. Winkler, whose conclusory opinions we found wholly unpersuasive.

Accordingly, the court finds that plaintiff is entitled to her reasonable attorneys' fees and costs. The parties are directed to confer pursuant to Local Rule 54.3 and attempt to agree on the amount. If agreement cannot be reached, then plaintiff shall file a fee petition, in accordance with the Rule, by August 6, 2004, and defendant may respond by August 20, 2004.

In the meantime, in order to permit post-judgment interest to begin accruing, the parties may prepare a judgment order for the amount of benefits and prejudgment interest calculated according to the prime rates applicable at the various relevant times. The order may be presented when ready. It will be entered with a reservation of jurisdiction over the question of fees and costs.

DATE: July 7, 2004

ENTER:

  
John F. Grady, United States District Judge